

Declaration of Dr. Dennis Jones

I, Dennis Jones, declare and state:

(1) I am the inventor of the inventions disclosed and claimed in U.S. Patent Application No. 10/647,466 ("the application"), filed August 26, 2003, and in U.S. Patent No. 6,299,929 B1 ("the '929 patent"), both of which claim priority from an application filed January 15, 1991.

(2) In 1989 and 1990, I was a principal with the firm of Spencer-Jones Inc. In that capacity, I worked as an outside consultant to Bariatrix Products International, Inc. ("Bariatrix"), a Canadian Corporation located at Lachine, Quebec, Canada, to provide research and development services related to possible new products (Document C1). My firm was reimbursed by Bariatrix for consulting services on an hourly basis.

(3) In 1989 and 1990, I was working with Bariatrix to develop a confectionery bar that contained more protein than carbohydrate, that could be made by a cold extrusion process, and tasted good ("the confectionery bar" or "Proti-Bar").

(4) In January 1990, Bariatrix did not possess the cold extrusion and other manufacturing equipment needed to determine the feasibility of producing confectionery bars. Increda-Meal Inc. of Cato, New York, however, possessed such equipment and had already entered into a Non-Disclosure Agreement (Document C2) with Spencer-Jones Inc. in contemplation of "the possible manufacture of one or more specialty products for Bariatrix."

(5) On December 28, 1989, I sent a fax to Mark Schmidt regarding arrangements for a Proti-Bar run at Increda-Meal (Document C3). The fax describes the "Inventory of Ingredients for Bar Manufacture at Increda-Meal (Ingredients supplied by Bariatrix)". The quantities calculated are for a proposed run of 195,000 bars. As explained below, the initial run turned out to be much smaller.

(6) I informed Bariatrix of the upcoming run in a fax to Kathie Ferrie (Document C4). The fax to Ferrie also reiterated the inventory of ingredients and included Revised Manufacturing Procedures.

(7) On January 5, 1990, I went to the Increda-Meal facility to supervise the run. In a fax to Leslie Rose of Bariatrix two days later (January 7), I reported that approximately 32,000 full size and 4,000 half size Honey-Peanut Proti-Bars were produced, using ingredients supplied by Bariatrix (with the possible exception of honey and corn syrup) (Document C5). An Increda-Meal document (Document C6) indicates that 35,160 full size (38 gram) and 1,800 half size (20 gram) bars were made for Bariatrix in the period January 1 through 31, 1990. The Increda-Meal invoice log (Document C7) shows a January 9, 1990 invoice to Bariatrix (#944) for \$4,363.80 which is consistent with my recollection of the tolling charge arrangement for the run.

(8) The bars made on January 5 were packed and shipped to Bariatrix's facility in Montreal, Canada, via Bariatrix's distribution facility in Plattsburgh, New York, for quality testing and analysis. Testing and analysis revealed that these bars (all of which were later destroyed) were not soft enough to be chewed, lacked a chewy texture, and were not pleasing

USSN 10/647 466

Attorney Docket No. 38305-0017

to eat. It is my recollection that bars from this run were photographed for an advertisement to be placed in a trade publication called "The Bariatrician". Copy for this advertisement was submitted on January 15, 1990, and appeared on or about February 1, 1990 (Document C8).

(9) I sent a fax to Mark Schmidt on January 7, 1990, in which I expressed satisfaction with Increda-Meal's equipment and personnel during the January 5th pilot run (Document C9). However, the cold extrusion process on January 5th had not been successful. I had observed that the dough was very hard and broke the wire for cutting the bars at least twice during the run. Accordingly, my fax set forth modified mixing prescriptions and procedures for Increda-Meal to use during a run contemplated for the following week, that I thought could result in a confectionery bar. In any event, the contemplated run that was the subject of my fax to Mark Schmidt did not occur.

(10) In late January or early February 1990, a Proti-Bar run was conducted at Increda-Meal. As I reported in a fax to Christiane LeBlanc of Bariatrix on February 5, 1990 (Document C10), the Chocolate-Orange mix "set like concrete."

(11) On the same day as my fax to Christiane LeBlanc of Bariatrix, February 5, 1990, I sent a fax to Rick Manus of Five Star Brands (Document C11) seeking to engage Five Star to produce Proti-Bars. Although I was still communicating with Mark Schmidt about the production of bars, it was apparent that Increda-Meal could not meet the expected demand for the product and that its prior efforts to produce confectionery bars were not successful. In my fax to Manus, I incorrectly stated that 600,000 Proti-Bars had already been made and that there existed a "constant back-order situation." In fact, only 36,000 bars had been made and the product had just been announced to the market. I think the 600,000 was "puffery" to some extent and may also have been based on what Bariatrix had wanted from the Increda-Meal run referred to above in paragraph 10, which I believe failed. The "constant back-order" was probably attributable to the fact that the launch advertisement in the Bariatrician appeared at the end of January or beginning of February and had generated enormous interest.

(12) As of February 16, 1990, I was still developing the Proti-Bar (Document C12). In a report to Bariatrix dated March 2, 1990 (Document C13), I reported on the results of the hands-on trial at Five Star, which was generally successful, and noted that the Honey-Almond bar tested at Five Star could not be "easily manufactured" at Increda-Meal because of potential "further problems" with that company's extrusion methods.

(13) I tested additional formulations and mix processing procedures in the February through March time frame (Documents C11-C18), which resulted in a superior product which not only tasted good but had good mouth feel, ran without any problem, and maintained good weight distribution (Document C18).

USSN 10/647,466

Attorney Docket No. 38305-0017

All statements herein are made upon my own knowledge and are true I understand that willful false statements and the like are punishable by fine or imprisonment, or both (18 USC 1001) and may jeopardize the validity of the application or any patent issuing therefrom.

6th February 2004.
Date

Dennis Jones
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